

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: September 8, 2009

August 28, 2009

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) MO-3503
for an After the Fact Cement Boat Launch Ramp

APPLICANT: Kelson Poepoe, Resource Manager
Hui Malama O Moomomi (HMM)

LANDOWNER: State of Hawaii

AREA OF USE: ≈ 80 square feet

LOCATION: Submerged State Land
Makai of TMK (2): 5-2-005: 006/019
Moomomi Bay, Hoolehua, Island of Molokai

SUBZONE: Resource

BACKGROUND:

On August 22, 2008, the Board of Land and Natural Resources (Board) found Hui Malama O Moomomi in violation of Chapter 13-5, Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes in regards to an unpermitted cement pad utilized as a boat launch that was constructed on State submerged land located in the Resource subzone of the Conservation District. All designated fines have been paid and this After the Fact CDUA has been submitted to hopefully resolve the unpermitted improvements.

DESCRIPTION OF AREA AND CURRENT USE

The subject area is located on the shores of Moomomi Bay, on the north side of the island of Molokai. The offshore-submerged land lies within the Resource subzone of the Conservation District. The coastal fast lands appear to lie within the General subzone of the Conservation District under the jurisdiction of the Department of Hawaiian Homelands (DHHL) and is currently leased to Hui Malama O Moomomi (HMM), a community-based resource conservation group. As the recognized stewards of DHHL, HMM manages the Moomomi Recreational and Cultural Park that is located here (Exhibits 1 & 2).

This region of north Molokai is undeveloped. The locality is a wind swept, rocky coast with an isolated beach. Moomomi Bay is a semi-protected recess along the coast. The bottom is a mix of shallow rocky shelves, boulders and sand channels. The topography slopes steeply offshore to the remnants of an ancient barrier reef. Rocks and a terrace of beach rock protrude from beneath a thin veneer of sand at the subject site.

The shoreline is characterized by substantial seasonal changes in sand movement and may be sandy only during the summer months when the ocean is calmer should swimming be attempted. During the winter, the waves wash away a large portion of the beach.

Invertebrate, including ohiki crabs on the sand, opihi and wana on the rocks are also present. Limu kohu, wana, ula and other marine life are common. Several species of reef fish move in and out of the Bay according to seasonal patterns. Hawaiian marine protected species that may occur in the vicinity of the boat launch include the federally threatened Green Sea Turtle and the federally endangered Hawaiian Monk Seal.

No archaeological or cultural resources were encountered or have been observed in the shoreline area or on submerged land in the near vicinity. Mauka areas along the Moomomi coast may yield sites of cultural significance.

Moomomi is the focus for community-based coastal resource management efforts of HMM. According to the applicant, the nearby residents of Hoolehua Homestead as well as other fishermen, students, educators, Kupuna and Hawaiian cultural practitioners heavily use the beach and bay, especially in the summer months. In 2008, an average of 600 + visitors per month visited the area. Swimming and surfing occurs in Moomomi Bay and the backshore is used for picnicking and camping. Photos illustrate recreational use of the area: Picture taking, sun bathing, and a flat surface to set up a place to watch and teach the children.

Subsistence fishing and gathering are still practiced on a regular basis. Studies have shown that Native Hawaiians from the nearby Hoolehua Hawaiian Homesteads depend on subsistence fishing for about 30% of their total food supply.

After the Fact Use

According to the applicant, the concrete launch pad was constructed through a community effort in May 2001 to accommodate small boating activity and enhance access to offshore marine resources for subsistence use. Local fishermen have been launching small boats across the sand beach for many years. The natural terrain made craft retrieval difficult resulting in spinning truck wheels that eroded the sandy beach.

HMM studied both sides of the Moomomi Beach, before and after the launch pad was installed in 2001. According to these observations, there is substantial seasonal movement of sand along the beach. North Pacific swells during the winter season carry sand from offshore deposits into the near shore where it works its way onto the east side of the beach. Strong trade winds during most of the year gradually move sand from the eastern to western side of the beach during the summer season, partially covering the boat launch ramp at times. Seasonal movement of sand has not changed along the beach.

According to the Applicant, the concrete pad slopes seaward from a natural rocky shelf that bisects Moomomi Beach. It is aligned with this shelf so that natural sand movement is not disrupted. The concrete launch pad blends into the local landscape and does not interfere with view planes or cause visual impacts. It is created out of rebar; wire and cement, of a rectangle shape approximately 80 square feet. Access is by foot, by sea or via an unimproved dirt road across Hawaiian Homelands. **(Exhibits 3 & 4).**

PROPOSED USE

To conform to the State's land use laws and legalize an existing concrete boat launching pad located at Moomomi Bay.

Alternatives

Should the boat launch pad be removed, improved access to marine resources for subsistence would be curtailed along with fire rescue response time and a CDUA would be obtained at a later date. Emergency response would take longer as the Fire Rescue Craft would be launched on the south side of the island delaying rescue operations and potential loss of life.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: the **State:** Department of Health; Office of Hawaiian Affairs; Department of Hawaiian Homelands; Department of Land and Natural Resources Divisions of: Aquatic Resources, Boating and Ocean Recreation, Conservation and Resource Enforcement, Engineering, Historic Preservation, Maui District Land Office; and the **County of Maui:** Department of Planning; the Molokai Planning Commission; Hoolehua Fire Station and Councilperson Danny Mateo. In addition, this application was also sent to the nearest public library, the Molokai Public Library, to make this information readily available to those who may wish to review it.

Responses were received and have been summarized from the following:

STATE OF HAWAII

DEPARTMENT OF HEALTH

No comments at this time. We strongly recommend that you review all of the Standard Comments on our website. Any comments specifically applicable to this application should be adhered to.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

We understand that this unregulated slab imposes an awkward vindication of its existence. However, we are also in general support of the applicant and the things they do in the area and we understand that this boat ramp has some beneficial applications.

The ramp has been used for fire rescue operations in the area by Maui County and can serve as an access point for many of our beneficiaries that depend on the resources in the area. OHA also understand that beach processes are not adversely affected by this structure and can see no other negative impacts at this time. We note that the applicant has already been fined for this structure. As such, we offer no objection to the CDUA.

DEPARTMENT OF HAWAIIAN HOMELANDS (DHHL)

Our Land Management Division has reviewed the CDUA. The Department supports Mr. Poepoe's efforts and hard work to ensure the preservation of Moomomi as a cultural treasure. The department also recognized the importance that grassroots organizations and cultural-based programs such as his play in reaching and educating our Native Hawaiian beneficiaries.

DHHL understands and agrees with the necessity of the boat launch pad for maintaining a subsistence fishing lifestyle, as well as for emergency rescue operations from Moomomi. DHHL affirms the continued relationship between the Department and Hui Malama o Moomomi and provides support for the successful approval of Mr. Poepoe's CDUA to legalize the existing boat ramp.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Conservation and Resource Enforcement

The slab has been at the present location for several years and appears to not be causing any harm to the shore area.

Engineering

No comments

Maui District Land Office

No comments

COUNTY OF MAUI

Hoolehua Fire Department

It is recommended that the concrete slab be approved. The slab has been utilized for rescue operations by the Maui Fire Department and is vital in maintaining the public welfare and safety of the people of Molokai. The ramp is used for launching and retrieval operations of our Rescue Craft (jet ski) and Rescue Boat. The strategic location and the time saved in utilizing this facility make a big difference when time is of the essence during a rescue mission.

The installation of this concrete slab has proven to be more beneficial rather than detrimental to the land as well as the for the Molokai community who frequent this area and utilize this ramp on a regular basis.

Because of the strategic location of Moomomi Bay and the protection it gives from the open sea, the Fire Department (as well as the local community) will still be utilizing this beach as a launch site whether the slab is there or not. The existence of the concrete slab merely makes everything happen faster and easier.

In the past eight years there has been no noticeable erosion of any kind around the slab that could be attributed to its existence.

Maui County Council Chair Danny A. Mateo

I fully support Hui Malama o Moomomi's request for a board permit for the following reasons:

1. The slab was placed by Hui Malama O Moomomi specifically to address the erosion caused by regular use for boat launching and for subsistence.
2. The slab is aligned with a natural rocky shelf so as not to impede the littoral process of sand movement.
3. The County of Maui Department of Fire and Public Safety have successfully utilized this launch for rescue operations. The slab offers a safe and stable launch for such operations. Further, without this launch, fire rescue would have to launch on the south shore of the island, making a long boat trip to the north coast, wasting precious time.
4. Hui Malama o Moomomi's purpose is to be the stewards of this area, to protect the history, the land and the culture.

I respectfully urge your favorable consideration in approving Hui Malama o Moomomi's After the Fact CDUA MO-3503.

ANALYSIS

After reviewing the application, by correspondence dated March 12, 2009, the Department has found that:

1. The After the Fact use is an identified land use in the Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-25, R-6 MARINE CONSTRUCTION (D-1) Marine construction, dredging, filling, or any combination thereof of submerged lands. Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40, HAR, a Public Hearing will not be required;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Section 11-200-8(4) Minor alterations in the conditions of land, water, or vegetation, the use is exempt;
4. The existing use appears to be makai of the shoreline and as such, is outside the Special Management Area.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The proposed use is an identified land use in the Resource subzone of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

Staff believes that the After the Fact use is consistent with the purpose of the Conservation District. Observations of the littoral processes were conducted by HMM for placement and effects of the improvements upon completion. Based upon these observations of no change, Staff believes the Conservation District resources has been protected and preserved. The Boat Launch has contributed to the public's health, safety and welfare by creating an additional launch site for rescue efforts.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. The After the Fact use is an identified land use in the Resource subzone of the Conservation District, pursuant to HAR, §13-5-25, R-6 MARINE CONSTRUCTION (D-1) Marine construction, dredging, filling, or any combination thereof of submerged lands.

HMM as the stewards of the area and creator of the cement launch pad will apply proper management to ensure sustained use of the natural resources and the care and maintenance of the cement ramp.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Staff believes the proposed project complies with provisions and guidelines contained in Chapter 205, HRS regarding Coastal Zone Management. The launch pad increases recreational opportunities and supports marine resource gathering for subsistence.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the land use has not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region. According to the applicant, the cement pad has not affected or changed littoral processes of the area.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The launch pad is compatible with the locality and surrounding area that includes the Moomomi Recreational and Cultural Park. Fishing, ocean recreation and marine resource education and skills are activities supported by the land use.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Staff believes the physical and environmental aspects of the site have been preserved. According to the Applicant, the concrete pad extends and slopes seaward from a natural rocky shelf that bisects Moomomi Beach. It is aligned with this shelf so that natural sand movement is not disrupted. The concrete launch pad blends into the local landscape and does not interfere with view planes or cause visual impacts.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed for this project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff believes the land use supports the public health, safety and welfare by creating a boat launch site to accommodate marine rescue operations on the north side of Molokai.

DISCUSSION

Staff notes many positive comments of the After the Fact Use. The ramp supports rescue operations by the County Fire Department. The boat launch ramp supports the subsistence life style uniquely found in the area. The ramp supports educational and recreational use of marine resources for all generations to learn and enjoy.

Adjacent landowner, Department of Hawaiian Homeland supports the applicants' efforts and recognizes Hui Malama O Moomomi, as the stewards of the area through a license agreement. As caretaker of the park and uplands, the applicant should manage and maintain the ramp. Any and all improvements beyond what currently exists shall be reviewed and approved by the Department prior to implementation.

RECOMMENDATION

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE Conservation District Use Application MO-3503 for an After the Fact Cement Boat Launch Ramp located at Moomomi, island of Molokai, on submerged State land makai of TMK (2): 5-2-005: 006/019 subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall obtain appropriate authorization from the Department for the occupancy of state lands;
- 4) The applicant shall comply with all applicable Department of Health administrative rules;
- 5) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 6) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 7) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to

minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;

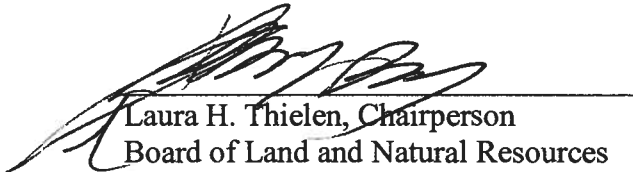
- 8) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 9) Any and all improvements beyond what currently exists shall be reviewed and approved by the Department prior to implementation;
- 10) Other terms and conditions as may be prescribed by the Chairperson; and
- 11) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

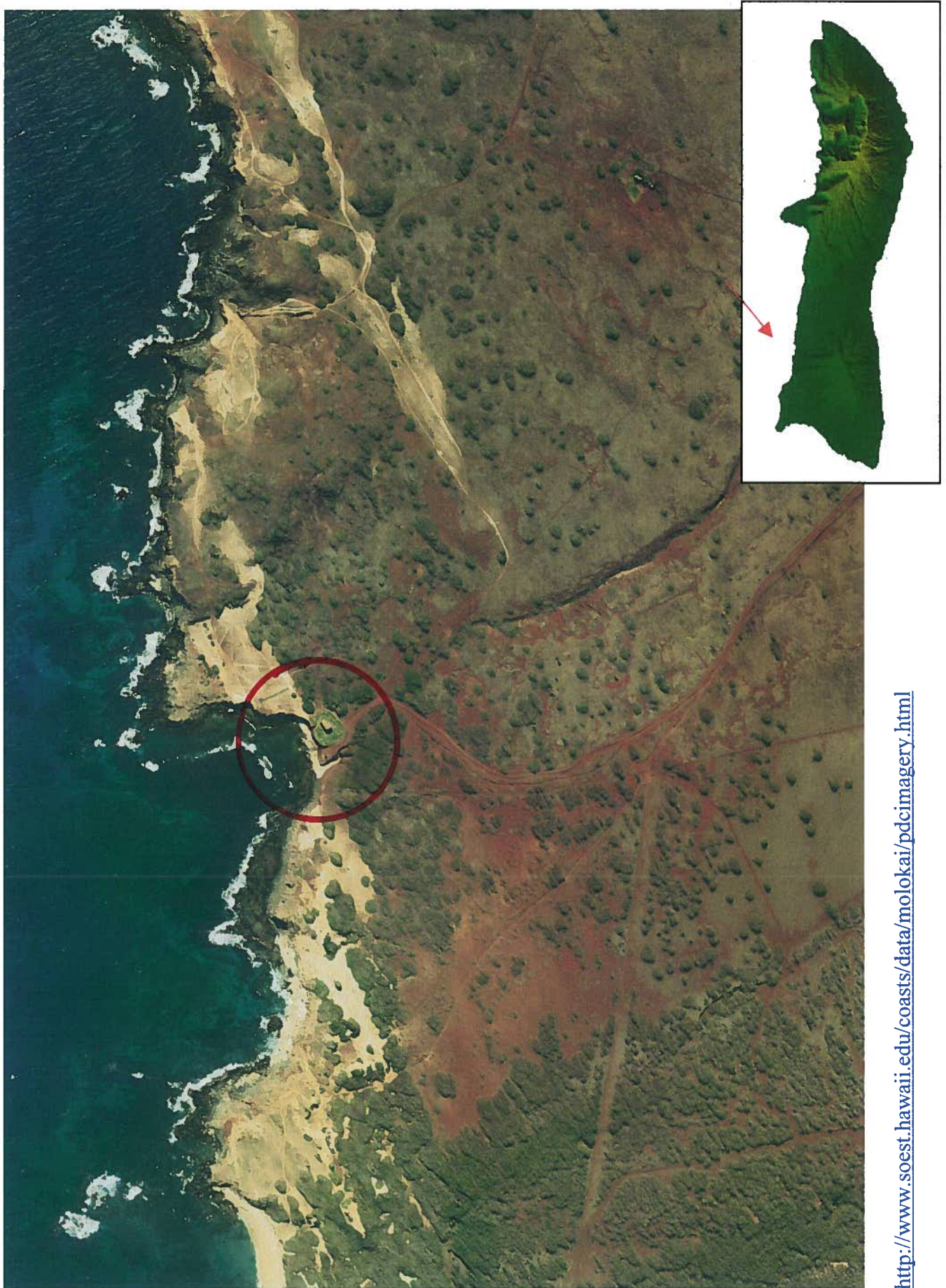


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

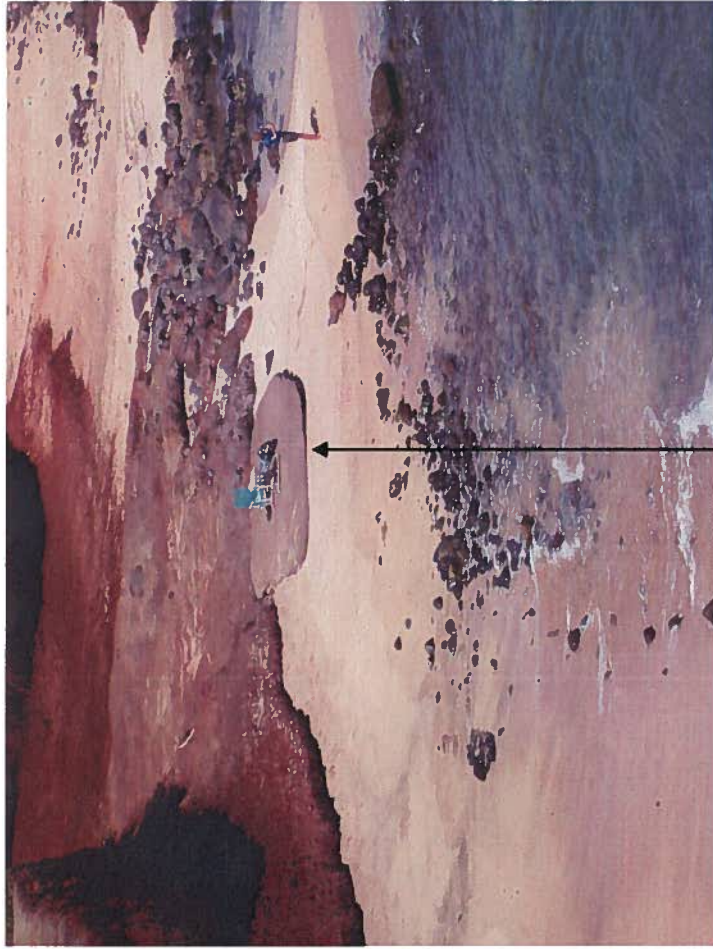
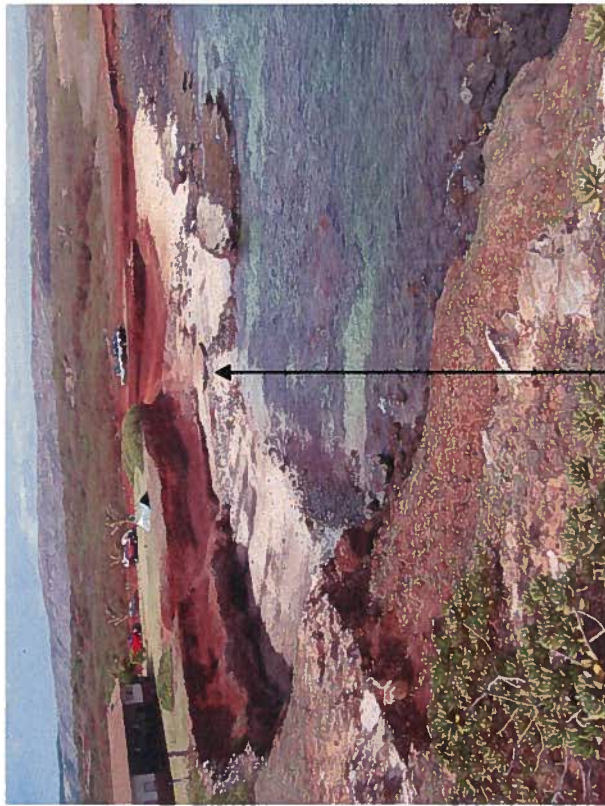


Laura H. Thielen, Chairperson
Board of Land and Natural Resources

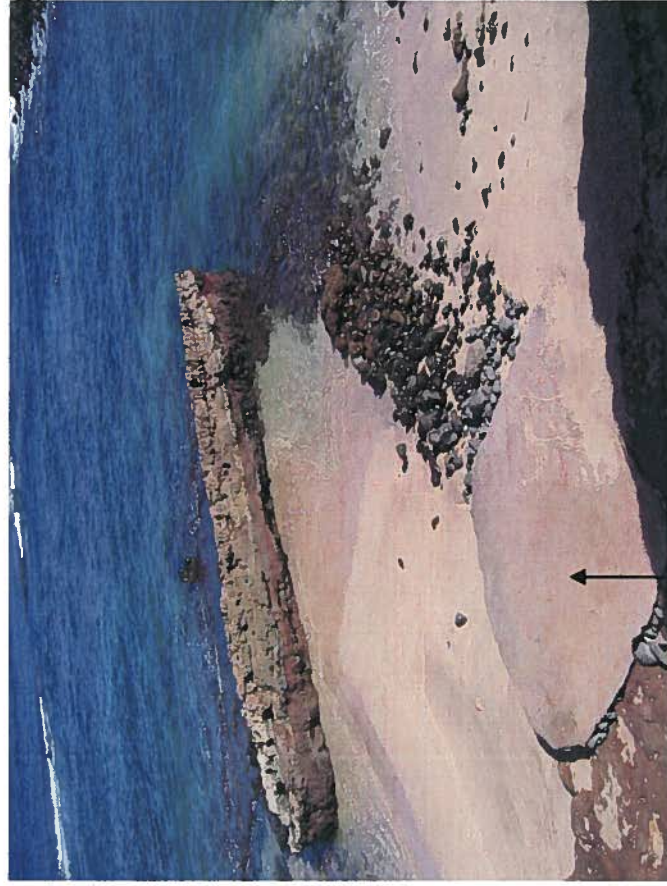
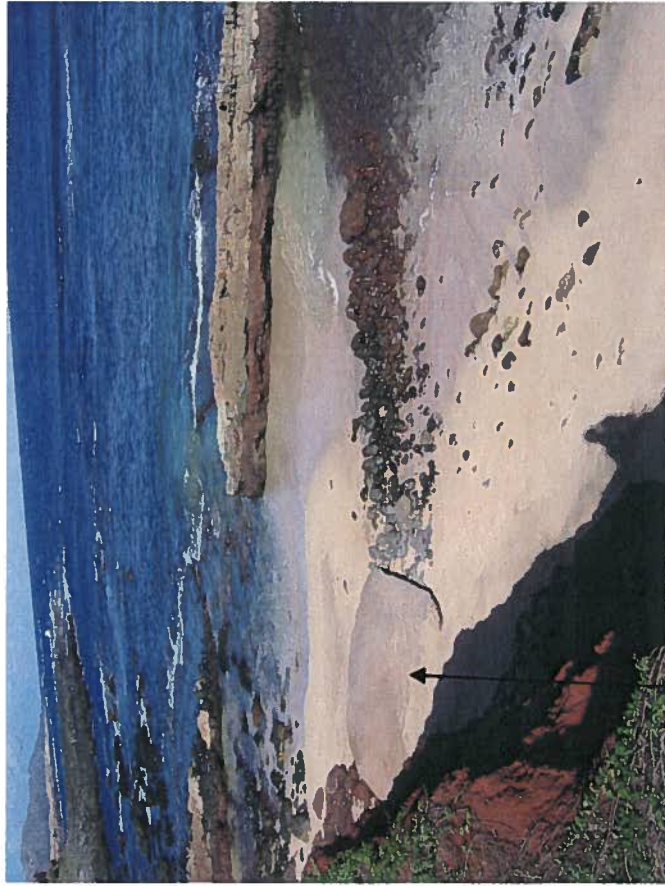


<http://www.soest.hawaii.edu/coasts/data/molokai/pdcimagery.html>

Concrete Boat Launch Pad, Mo'omomi Beach, Summer 2008



Launch Pad No Barrier to Sand Movement





Moomomi site Inspection June 18, 2008

